

OUTTEN & GOLDEN LLP
Justin M. Swartz
Ossai Miazad
Jennifer L. Liu
3 Park Avenue, 29th Floor
New York, New York 10016
Telephone: (212) 245-1000
Facsimile: (212) 977-4005

SHAVITZ LAW GROUP, P.A.
Gregg I. Shavitz (admitted *pro hac vice*)
Susan H. Stern (admitted *pro hac vice*)
1515 South Federal Highway, Suite 404
Boca Raton, FL 33432
Telephone: (561) 447-8888
Facsimile: (561) 447-8831

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

RENE HERNANDEZ, REBECCA HESTON,
JEFFREY STEINBERG, TRINITY GRAY, ERIC
EBANKS, and WILLIAM ROGERS, individually
and on behalf all others similarly situated,

Plaintiffs,

11 Civ. 8472 (KBF) (DCF)

v.

MERRILL LYNCH & CO., INC.; MERRILL
LYNCH, PIERCE, FENNER & SMITH, INC.,
and BANK OF AMERICA CORPORATION,

Defendants.

**DECLARATION OF OSSAI MIAZAD IN SUPPORT OF
PLAINTIFFS' MOTION FOR CONDITIONAL
CERTIFICATION AND COURT-AUTHORIZED
NOTICE PURSUANT TO SECTION 216(b) OF THE FLSA**

I, Ossai Miazad, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury as follows:

1. I am an associate at Outten & Golden LLP, attorneys for Plaintiffs herein, and an attorney in good standing admitted to practice in the State of New York and before this Court. I make this declaration in support of Plaintiffs' Motion for Conditional Certification and Court-Authorized Notice Pursuant to Section 216(b) of the FLSA.

Procedural History

2. Plaintiffs Rene Hernandez, Rebecca Heston, and Jeffrey Steinberg filed this lawsuit on November 22, 2011.

3. On January 31, 2012, Plaintiffs filed an amended complaint adding three additional named plaintiffs, Trinity Gray, Eric Ebanks, and William Rogers, and claims under New Jersey law.

4. To date, the parties have engaged in very limited document discovery related to this motion.

5. In addition to the six named plaintiffs, one other former Merrill FSA has also joined the case as an Opt-In Plaintiff.

6. A second former FSA, Jeffrey Tillman, opted into the case on February 21, 2012. Plaintiffs' counsel subsequently learned that he did not work as an FSA during the relevant statute of limitations period and withdrew his consent form on March 9, 2012.

7. By Order dated January 27, 2012, the Court authorized Plaintiffs to serve limited document requests related to this motion by January 30, 2012 and for Defendants to produce responsive documents on an expedited basis.

8. Defendants' failure to timely produce responsive documents resulted in Plaintiffs seeking a brief adjournment from the Court of the deadline to file their motion. By Order dated February 24, 2012, the Court reiterated that Defendants should produce responsive documents without delay.

9. Prior to the Court's Order, Defendants had notified Plaintiffs that they would not produce certain documents without a confidentiality stipulation. Plaintiffs agreed to and the

parties executed a confidentiality stipulation on March 1, 2012, which was so ordered by the Court on the same day.

10. On four separate occasions following the Court's February 24th Order (February 28, March 1, 5, and 7), Plaintiffs asked Defendants for a date by when they would produce responsive documents. Defendants made two additional productions, one on March 1, 2012 and the second on March 8, 2012, however, the documents produced were almost exclusively personnel documents related to the individual plaintiffs.

11. On March 8, 2012, Defendants for the first time informed Plaintiffs that they would produce responsive "corporate" documents by March 16, 2012.

12. As of March 9, 2012, Plaintiffs have identified *only four documents* produced by Defendants that relate to class-wide issues and that do not otherwise relate to the individual named plaintiffs.

Exhibits

13. Attached are true and correct copies of the following documents:

a. Attached as Exhibit A are true and correct copies of selected pages from Bank of America Corporation's 2011 Form 10-K, dated February 23, 2012.

b. Attached as Exhibit B is a true and correct copy of an article authored by Janet Levaux, *BofA's Darnell to 'Get Out of Way' of Merrill Brokers*, AdvisorOne (Sept. 28, 2011), <http://www.advisorone.com/2011/09/28/bofas-darnell-to-get-out-of-way-of-merrill-brokers> ("AdvisorOne Article").

c. Attached as Exhibit C is a true and correct copy of a job description for the position of Financial Solutions Consultant BQ016 ("Core 1 FSA Job Description"), BOAHERNANDEZ001885.

d. Attached as Exhibit D is a true and correct copy of a job description for the position of Financial Solutions Advisor BQ010 (“Experienced FSA Job Description”), BOAHERNANDEZ001884.

e. Attached as Exhibit E is a true and correct copy of Plaintiffs’ Amended Complaint.

f. Attached as Exhibit F is a true and correct copy of the Declaration of Rene Hernandez (“Hernandez Decl.”).

g. Attached as Exhibit G is a true and correct copy of the Declaration of Rebecca Heston (“Heston Decl.”).

h. Attached as Exhibit H is a true and correct copy of the Declaration of Jeffrey Steinberg (“Steinberg Decl.”).

i. Attached as Exhibit I is a true and correct copy of the Declaration of Trinity Gray (“Gray Decl.”).

j. Attached as Exhibit J is a true and correct copy of the Declaration of Eric Ebanks (“Ebanks Decl.”).

k. Attached as Exhibit K is a true and correct copy of the Declaration of William Rogers (“Rogers Decl.”).

l. Attached as Exhibit L is a true and correct copy of the Declaration of Betty Reynolds (“Reynolds Decl.”).

m. Attached as Exhibit M is a true and correct copy of Schedule a Consultation (“Schedule a Consultation”), available at http://invest.ml.com/OR/pages/FACProspectScheduler.aspx?src_cd=OTHER&_tps=4868bf (downloaded March 7, 2012).

n. Attached as Exhibit N is a true and correct copy of Merrill Edge Advisory Center, 2011 Variable Compensation Plan – Financial Solutions Advisors (“VCP”), BOAHERNANDEZ001873-83.

o. Attached as Exhibit O is a true and correct copy of Investment Process, Resource Guide (“Investment Process”).

p. Attached as Exhibit P is a true and correct copy of Implement Solutions, Step Three – Investment Allocations (“Implement Solutions”).

q. Attached as Exhibit Q are true and correct copies of Eric Ebanks’s 2008 Performance Evaluation, BOAHERNANDEZ000020-22; Rebecca Heston’s 2008 Performance Evaluation, BOAHERNANDEZ000891-94; William Rogers’s 2007 Performance Evaluation, BOAHERNANDEZ001015-17; and Jeffrey Steinberg’s 2008 Performance Evaluation, BOAHERNANDEZ001368-70 (“Performance Evaluations”).

r. Attached as Exhibit R are true and correct copies of Confidential Workforce Reports for Eric Ebanks, William Rogers, Rebecca Heston, and Jeffrey Steinberg (“Workforce Reports”), BOAHERNANDEZ000138-44, BOAHERNANDEZ000145-51, BOAHERNANDEZ000651-56, and BOAHERNANDEZ001349-54.

s. Attached as Exhibit S are true and correct copies of job postings for the Experienced FSA position (“Job Postings”), available at <http://careers.bankofamerica.com/JobDetails.aspx?SearchPage=ASP&CountryId=1&JobId=1200008691&stateid=10&cityid=410765&travel=1&jfamily=&lang=&fullpart=&shift=&datepost=0&keywords=1200008691&jobarea s=-1-1&feedname=BOAFEDUSA&BOAFeedName=&jobfamilyid=0&international city=&LocationID=0> (downloaded March 7, 2012); http://mutualfundcareers.com/mfc/asp/job_detail.asp?id=9881&utm_source=Indeed&utm (downloaded March 7, 2012);

<http://jobs.climber.com/jobs/Banking/Jacksonville-FL-USA/Financial-Solutions-Advisor-In>
(downloaded March 7, 2012); and <http://www.americasjobexchange.com/job-detail/BILINGUAL-SPANISH-Experienced-Financial-Solutions-Advisor-Jan--Class-Hopewell-NJ-Pennington-NJ-554038543> (downloaded March 8, 2012).

t. Attached as Exhibit T are true and correct copies of Jeffrey Steinberg's ISA Variable Compensation reports ("Variable Compensation Reports").

Notice

14. Attached as Exhibit U is Plaintiffs' Proposed Notice.
15. Attached as Exhibit V is a true and correct copy of *Li v. Health Plus Prepaid Health Servs. Plan, Inc.*, No. 10 Civ. 1843 (S.D.N.Y. Dec. 20, 2010).
16. Attached as Exhibit W is a true and correct copy of *Ravenell v. Avis Budget Grp., Inc.*, No. 08 Civ. 2113 (E.D.N.Y. Sept. 29, 2010).
17. Attached as Exhibit X is a true and correct copy of *Stillman v. Staples, Inc.*, No. 07 Civ. 849 (D.N.J. July 3, 2008).

I declare under penalty of perjury under the laws of New York and the United States that the foregoing is true and correct.

Dated: March 9, 2012
New York, New York

Respectfully submitted,

By: /s/ Ossai Miazad
Ossai Miazad

OUTTEN & GOLDEN LLP
3 Park Avenue, 29th Floor
New York, New York 10016
Telephone: (212) 245-1000
Facsimile: (212) 977-4005